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9
10 **UNITED STATES DISTRICT COURT**
11 **SOUTHERN DISTRICT OF CALIFORNIA-EDWARD J. SCHWARTZ COURTHOUSE**

12 AMCO INSURANCE COMPANY)

13 Plaintiff,)

14 v.)

15 GROHE AMERICA, INC.; and DOES 1)
16 through 25, INCLUSIVE,)

17 Defendants.)

18 GROHE AMERICA, INC.,)

19 Third Party Plaintiff,)

20 v.)

21 VOSS PLUMBING, and ROES 1 through 25,)
22 INCLUSIVE,)

23 Third Party Defendant)

Case No. 08-CV-207 JLS (WMc)
(SDSC Case No. 37-2007-00072924-CU-
PL-CTL

**THIRD PARTY DEFENDANT, VOSS
PLUMBING'S ANSWER TO THE
UNVERIFIED THIRD PARTY
COMPLAINT OF GROHE AMERICA,
INC., FOR EQUITABLE INDEMNITY,
CONTRIBUTION AND
DECLARATORY RELIEF**

DEMAND FOR JURY TRIAL

Complaint Filed: August 10, 2007

24 **JURISDICTION** of this Court is invoked on the basis of diversity of citizenship and
25 pursuant to 28 U.S.C. 1332, 28 U.S.C. 1441 and 28 U.S.C 1446.

26 **COMES NOW**, Third Party Defendant, VOSS PLUMBING, which hereby sets forth its
27 Demand for a Jury Trial and in answer to the unverified third party complaint of GROHE
28 AMERICA, INC., on file, herein admits, denies and alleges as follows:

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THIRD PARTY DEFENDANT, VOSS PLUMBING'S RESPONSE TO THIRD PARTY COMPLAINT OF GROHE AMERICA, INC., ALLEGATIONS OF PARAGRAPH 1:

Admit that GROHE is a third party plaintiff. As to each and every other allegation, Third Party Defendant, VOSS PLUMBING denies based upon lack of information or knowledge to form a belief as to the truth of the allegation asserted.

THIRD PARTY DEFENDANT, VOSS PLUMBING'S RESPONSE TO THIRD PARTY COMPLAINT OF GROHE AMERICA, INC., ALLEGATIONS OF PARAGRAPH 2:

Admit that VOSS PLUMBING, held a contractors license issued by the state of California at the time of the incident. Admit that VOSS PLUMBING was doing business within the Southern Judicial District of the United States District Court.

THIRD PARTY DEFENDANT, VOSS PLUMBING'S RESPONSE TO THIRD PARTY COMPLAINT OF GROHE AMERICA, INC., ALLEGATIONS OF PARAGRAPH 3:

VOSS PLUMBING denies all allegation contained within paragraph 3 based upon lack of information or knowledge to form a belief as to the truth of the allegations asserted.

THIRD PARTY DEFENDANT, VOSS PLUMBING'S RESPONSE TO THIRD PARTY COMPLAINT OF GROHE AMERICA, INC., ALLEGATIONS OF PARAGRAPH 4:

VOSS PLUMBING denies that each it was at all times relevant, the agent, servant and employee of other third party defendants. As to all other allegations contained therein, VOSS PLUMBING denies lack of information or knowledge to form a belief as to the truth of the allegations asserted.

THIRD PARTY DEFENDANT, VOSS PLUMBING'S RESPONSE TO THIRD PARTY COMPLAINT OF GROHE AMERICA, INC., ALLEGATIONS OF PARAGRAPH 5:

VOSS PLUMBING admits Plaintiff AMCO has a complaint on file. As to each and every other allegation contained within paragraph 5, VOSS PLUMBING denies based upon lack of information or knowledge to form a belief as to the truth of the allegations asserted.

THIRD PARTY DEFENDANT, VOSS PLUMBING'S RESPONSE TO THIRD PARTY COMPLAINT OF GROHE AMERICA, INC., FIRST CAUSE OF ACTION, EQUITABLE INDEMNITY CONTAINED WITHIN PARAGRAPH 6:

1 VOSS PLUMBING denies based upon lack of information or knowledge to form a belief
2 as to the truth of the allegations asserted. To the extent third party Plaintiff incorporates allegations,
3 please reference Voss Plumbing's response to paragraphs 1 through 5 contained herein.

4 **THIRD PARTY DEFENDANT, VOSS PLUMBING'S RESPONSE TO THIRD PARTY**
5 **COMPLAINT OF GROHE AMERICA, INC., FIRST CAUSE OF ACTION, EQUITABLE**
6 **INDEMNITY CONTAINED WITHIN PARAGRAPH 7:**

7 VOSS PLUMBING denies each and every allegation contained within this paragraph and
8 denies responsibility for Plaintiff's injuries except VOSS PLUMBING admits that Third Party
9 Plaintiff is faced with a potential loss.

10 **THIRD PARTY DEFENDANT, VOSS PLUMBING'S RESPONSE TO THIRD PARTY**
11 **COMPLAINT OF GROHE AMERICA, INC., SECOND CAUSE OF ACTION,**
12 **CONTRIBUTION CONTAINED WITHIN PARAGRAPH 8:**

13 VOSS PLUMBING denies based upon lack of information or knowledge to form a belief
14 as to the truth of the allegations asserted. To the extent third party Plaintiff incorporates allegations,
15 please reference Voss Plumbing's response to paragraphs 1 through 7 contained herein.

16 **THIRD PARTY DEFENDANT, VOSS PLUMBING'S RESPONSE TO THIRD PARTY**
17 **COMPLAINT OF GROHE AMERICA, INC., SECOND CAUSE OF ACTION,**
18 **CONTRIBUTION CONTAINED WITHIN PARAGRAPH 9:**

19 VOSS PLUMBING denies each and every allegation contained within this paragraph and
20 denies responsibility for Plaintiff's injuries.

21 **THIRD PARTY DEFENDANT, VOSS PLUMBING'S RESPONSE TO THIRD PARTY**
22 **COMPLAINT OF GROHE AMERICA, INC., SECOND CAUSE OF ACTION,**
23 **CONTRIBUTION CONTAINED WITHIN PARAGRAPH 10:**

24 VOSS PLUMBING denies each and every allegation contained within this paragraph.

25 **THIRD PARTY DEFENDANT, VOSS PLUMBING'S RESPONSE TO THIRD PARTY**
26 **COMPLAINT OF GROHE AMERICA, INC., SECOND CAUSE OF ACTION,**
27 **CONTRIBUTION CONTAINED WITHIN PARAGRAPH 11:**

28 VOSS PLUMBING denies each and every allegation contained within this paragraph.

**THIRD PARTY DEFENDANT, VOSS PLUMBING'S RESPONSE TO THIRD PARTY
COMPLAINT OF GROHE AMERICA, INC., THIRD CAUSE OF ACTION,
DECLARATORY RELIEF CONTAINED WITHIN PARAGRAPH 12:**

VOSS PLUMBING denies based upon lack of information or knowledge to form a belief as to the truth of the allegations asserted. To the extent third party Plaintiff incorporates allegations, please reference Voss Plumbing's response to paragraphs 1 through 11 contained herein.

**THIRD PARTY DEFENDANT, VOSS PLUMBING'S RESPONSE TO THIRD PARTY
COMPLAINT OF GROHE AMERICA, INC., THIRD CAUSE OF ACTION,
DECLARATORY RELIEF CONTAINED WITHIN PARAGRAPH 13 a:**

VOSS PLUMBING denies each and every allegation set forth in this paragraph with the exception that VOSS PLUMBING admits that a controversy exists between Third Party plaintiff GROHE and third party Defendant, VOSS PLUMBING.

**THIRD PARTY DEFENDANT, VOSS PLUMBING'S RESPONSE TO THIRD PARTY
COMPLAINT OF GROHE AMERICA, INC., THIRD CAUSE OF ACTION,
DECLARATORY RELIEF CONTAINED WITHIN PARAGRAPH 13 b:**

VOSS PLUMBING admits that a controversy exists between Third Party plaintiff GROHE and third party Defendant, VOSS PLUMBING. VOSS PLUMBING admits that VOSS PLUMBING contends it is not obligated to hold third party plaintiff GROHE harmless or to reimburse it for the defense of AMCO's actions. As to all remaining allegations VOSS PLUMBING denies based upon lack of information or knowledge to form a belief as to the truth of the allegations asserted.

**THIRD PARTY DEFENDANT, VOSS PLUMBING'S RESPONSE TO THIRD PARTY
COMPLAINT OF GROHE AMERICA, INC., THIRD CAUSE OF ACTION,
DECLARATORY RELIEF CONTAINED WITHIN PARAGRAPH 14:**

VOSS PLUMBING denies based upon lack of information or knowledge to form a belief as to the truth of the allegations asserted.

FIRST AFFIRMATIVE DEFENSE

1. The third party complaint of GROHE AMERICA, INC., and each and every cause

1 of action contained therein, fails to state facts sufficient to constitute a cause of action against this
2 answering Third Party Defendant.

3 **SECOND AFFIRMATIVE DEFENSE**

4 2. Third Party Defendant, VOSS PLUMBING, is informed and believes and upon such
5 information and belief alleges that if, in fact, Third Party Defendant, VOSS PLUMBING is found
6 to have been negligent in any manner, its negligence could only be passive and secondary, while the
7 negligence of Third Party Plaintiff, GROHE AMERICA, INC. would be active and primary and thus
8 bar recovery on the third party complaint.

9 **THIRD AFFIRMATIVE DEFENSE**

10 3. Third Party Defendant, VOSS PLUMBING is informed and believes and upon such
11 information and belief alleges that all times mentioned herein, if any third party defendants or ROES
12 were negligent, third party defendants and ROES, both known and unknown, and each of them, were
13 negligent, careless and reckless and unlawfully conducted themselves so as to substantially
14 contribute to Third Party Plaintiff, GROHE AMERICA, INC.'s injuries, and said negligence, if any
15 either bars in whole or in part damages sought herein against this answering Third Party Defendant
16 VOSS PLUMBING.

17 **FOURTH AFFIRMATIVE DEFENSE**

18 4. Third Party Defendant, VOSS PLUMBING is informed and believes and upon such
19 information and belief alleges that all times mentioned herein, Third Party Plaintiff, GROHE
20 AMERICA, INC. was negligent, careless and reckless and unlawfully conducted itself so as to
21 substantially contribute to its own alleged injuries and damages compared to the conduct of all other
22 parties, all of which said negligence either bars in whole or in part damages sought herein.

23 **FIFTH AFFIRMATIVE DEFENSE**

24 5. Third Party Defendant, VOSS PLUMBING is informed and believes and upon such
25 information and belief alleges that in the event Third Party Plaintiff, GROHE AMERICA, INC.
26 should establish any liability on the part of this answering Third Party Defendant, VOSS
27 PLUMBING, which liability is expressly denied, this answering Third Party Defendant, VOSS
28 PLUMBING may not be obligated to pay sums representing a proportion or percentage of fault not

1 its own, but that of Third Party Plaintiff, GROHE AMERICA, INC. other parties to this action and
2 third persons not parties to this action.

3 **SIXTH AFFIRMATIVE DEFENSE**

4 6. Third Party Defendant, VOSS PLUMBING is informed and believes and upon such
5 information and belief alleges that any and all injuries and damages, if any, sustained or suffered
6 by Third Party Plaintiff, GROHE AMERICA, INC. was proximately caused and contributed to by
7 the negligence and/or affirmative wrongful conduct of Third Party Plaintiff, GROHE AMERICA,
8 INC., or by the negligence and/or affirmative wrongful conduct of Third Party Plaintiff, GROHE
9 AMERICA, INC.'s agents, successors in interest or predecessors in interest.

10 **SEVENTH AFFIRMATIVE DEFENSE**

11 7. Third Party Defendant, VOSS PLUMBING is informed and believes and upon such
12 information and belief alleges that all times mentioned herein, Third Party Plaintiff, GROHE
13 AMERICA, INC. and each of its successors-in-interest and predecessors-in-interest failed to use
14 reasonable care to reduce and minimize as much as reasonably possible, the damages, if any, and
15 that said failure was the direct and proximate cause of any and all damages, if any, sustained by
16 plaintiff.

17 **EIGHTH AFFIRMATIVE DEFENSE**

18 8. Third Party Defendant, VOSS PLUMBING is informed and believes and upon such
19 information and belief alleges that Third Party Plaintiff, GROHE AMERICA, INC. has failed to
20 set forth facts sufficient to support an award for attorney's fees.

21
22 **NINTH AFFIRMATIVE DEFENSE**

23 9. Third Party Defendant, VOSS PLUMBING is informed and believes and upon such
24 information and belief alleges that if there are any defects or inadequacies in the work performed
25 by Third Party Defendant, VOSS PLUMBING, which Third Party Defendant, VOSS PLUMBING
26 expressly denies, Third Party Plaintiff, GROHE AMERICA, INC. failed to timely notify this
27 answering Third Party Defendant, VOSS PLUMBING of this lawsuit.

28 **TENTH AFFIRMATIVE DEFENSE**

1 10. Third Party Defendant, VOSS PLUMBING is informed and believes and upon such
2 information and belief alleges that Third Party Plaintiff, GROHE AMERICA, INC. engaged in
3 conduct and activities by reason of which it is estopped to assert any claim or cause of action
4 against this answering Third Party Defendant, VOSS PLUMBING.

5 **ELEVENTH AFFIRMATIVE DEFENSE**

6 11. Third Party Defendant, VOSS PLUMBING is informed and believes and upon such
7 information and belief alleges that if Plaintiff, AMCO INSURANCE COMPANY and/or Third Party
8 Plaintiff, GROHE AMERICA, INC. herein suffered or sustained any loss, injury, damage or
9 detriment, the same was directly and proximately caused and contributed to by the strict liability,
10 breach of warranty, conduct, acts, omissions, activities, carelessness, recklessness and negligence
11 of said Third Party Plaintiff, GROHE AMERICA, INC. herein.

12 **TWELFTH AFFIRMATIVE DEFENSE**

13 12. Third Party Defendant, VOSS PLUMBING is informed and believes and upon such
14 information and belief alleges that Third Party Plaintiff, GROHE AMERICA, INC. unreasonably
15 delayed the filing of its third party complaint as to Third Party Defendant, VOSS PLUMBING
16 which has prejudiced this answering Third Party Defendant, VOSS PLUMBING and the defense
17 of the action, thereby barring or diminishing any recovery by Third Party Plaintiff, GROHE
18 AMERICA, INC. herein under the doctrines of estoppel, laches and waiver.

19 **THIRTEENTH AFFIRMATIVE DEFENSE**

20 13. Third Party Defendant, VOSS PLUMBING is informed and believes and upon such
21 information and belief alleges that by virtue of Third Party Plaintiff, GROHE AMERICA, INC.'s
22
23 unlawful, immoral, careless, negligent and other wrongful conduct, Third Party Plaintiff, GROHE
24 AMERICA, INC. should be barred from recovering against this answering Third Party Defendant,
25 VOSS PLUMBING by the equitable Doctrine of Unclean Hands.

26 **FOURTEENTH AFFIRMATIVE DEFENSE**

27 14. Third Party Defendant, VOSS PLUMBING is informed and believes and upon such
28 information and belief alleges that Third Party Plaintiff, GROHE AMERICA, INC. failed to take

1 steps with regard to mitigating damages.

2 **FIFTEENTH AFFIRMATIVE DEFENSE**

3 15. Third Party Defendant, VOSS PLUMBING is informed and believes and upon such
4 information and belief alleges that this third Party Plaintiff, GROHE AMERICA, INC. and each
5 cause of action thereof, is barred by application of the Sections 2607(3)(a) and 2725(1) and (2) of
6 the Uniform Commercial Code of the State of California.

7 **SIXTEENTH AFFIRMATIVE DEFENSE**

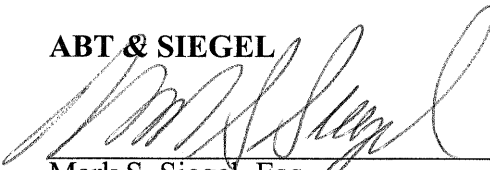
8 16. Third Party Defendant, VOSS PLUMBING is informed and believes and upon such
9 information and belief alleges that Third Party Plaintiff, GROHE AMERICA, INC. has failed and
10 neglected to use reasonable care to minimize and mitigate the losses, injuries and damages
11 complained of, if any there are.

12 **WHEREFORE**, this answering third party defendant prays judgment against third party
13 Plaintiff, that third party Plaintiff take nothing by way of its third party complaint, and further that
14 the court award Third Party Defendant, VOSS PLUMBING, its cost of suit, including investigation
15 and reasonable attorneys' fees and prays for such other and further relief as the court may deem just
16 and proper.

17 Dated: May 6, 2008

ABT & SIEGEL

18
19 By:


Mark S. Siegel, Esq.
Attorneys for Third Party Defendant, VOSS
PLUMBING

CERTIFICATE OF SERVICE

AMCO INSURANCE COMPANY v. GROHE AMERICA, INC.

Mark S. Siegel, Esq. (Bar No. 128800)

ABT & SIEGEL

401 West A Street, Suite 1730

San Diego, California 92101

(619) 236-9796; Fax: (619) 236-9096

Attorneys for VOSS PLUMBING

I, the undersigned, declare: That I am employed in the County of San Diego. I am over the age of 18 years and not a party to the within action; my business address is 401 West A Street, Suite 1730, San Diego, California 92101.

On May 6, 2008, I served the foregoing document(s) described as:

**THIRD PARTY DEFENDANT, VOSS PLUMBING'S ANSWER TO THE UNVERIFIED
THIRD PARTY COMPLAINT OF GROHE AMERICA, INC., FOR EQUITABLE
INDEMNITY, CONTRIBUTION AND DECLARATORY RELIEF and DEMAND FOR
JURY TRIAL**

I served the above-mentioned documents on the interested parties in this action as follows:

☒ **BY MAIL** I certify that a copy of the foregoing document was this date served upon all counsel of record by placing a copy of the same in the United States mail, postage prepaid, and sent to their last know address as follows:

Robert Harker, Esq.
Law Offices of Goates & Beavers
1201 Dove St., Suite 300
Newport Beach, CA 92660

Todd Worthe, Esq.
Worthe Hanson & Worthe
1851 E. First St., Ninth Floor
Santa Ana, CA 92705

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.


TONI D. MOHONDRO